



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06710/2017

THE IMMIGRATION ACTS

Heard at Newport
On 18 July 2018

Decision & Reasons Promulgated
On 29 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

Ms M G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Joseph, counsel instructed by NLS solicitors

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran, born on 6.2.89. She arrived in the United Kingdom on 1 January 2017 and claimed asylum the following day. The basis of her claim is that she was forced to undergo an arranged marriage to a man, but subsequently began an adulterous affair with a former boyfriend and this was discovered by her husband, whereupon she went to her sister's house and then to a friend of her sister's and fled Iran when she found out her husband had been to her mother's house and that there was a warrant for her arrest. The Appellant began the process of conversion to Christianity after her arrival in the UK.

2. Her asylum application was refused in a decision dated 6 July 2017. The Appellant appealed against this decision and her appeal came before First tier Tribunal Judge Boyes for hearing on 15 August 2017. In a decision and reasons promulgated on 27 September 2017 he dismissed the appeal.

3. An application for permission to appeal was made, in time, on the basis that the Judge's adverse credibility findings were based on speculation and were without adequate reasoning; his findings as to the genuineness of the Appellant's conversion to Christianity were based on his own assumptions and lacked sound reasoning and the Judge failed to consider the relevant jurisprudence *viz* Dorodian [01/TH/01537] or FS (Iran-Christian converts) CG [2004] UKIAT 00303.

4. Permission to appeal was granted by First tier Tribunal Judge Doyle for the reasons set out in the grounds of appeal. No rule 24 response has been lodged on behalf of the Respondent.

Hearing

5. At the hearing before me, Mr Joseph sought to rely on the fairly lengthy grounds of appeal relied upon in their entirety. In essence, he submitted, at [7] the overarching position is that the credibility findings were not adequately reasoned and based on speculation. It is acknowledged that challenges to credibility are not automatically straightforward but in this case the Judge has fallen into error.

6. Mr Joseph submitted that there are two bases of claim: adultery and Christian conversion. At [23] he submitted that the finding that there is a "*stark contrast in the appellant's claimed behaviour and the ethos in which she was brought up and lived*" represents the Judge's own purely subjective views and displays an inadequate level of reasoning. The Appellant was allowed to go to University and although her parents may be strict and conservative, she kept her lifestyle secret from family. She lived at home and attended university during the day. This is perfectly plausible and reasonable and at the same time her father arranged her marriage.

7. Mr Joseph submitted that in finding at [24] that the Appellant was vague, the Judge ignored the witness statement, which did have detail, but the Judge appears not to have referred to that. His finding that there was an air of fantasy is not justifiable. In respect of [25] the Home Office Country Policy Information Note cited says the opposite of what the Judge finds and the objective evidence wholly supports the Appellant's account and is not consistent with what the Judge finds and he has failed to take that evidence into account.

8. At [27] similarly the background evidence indicates that people do take risks. Mr Joseph submitted that the reference at [27] to the Home Office Country Guidance must be presumed to be the CPIN November 2016 referred to at [25] but it is not clear what he is referring to. At [28] Mr Joseph submitted that the finding by the Judge misrepresents the evidence in that she has never said there was a big reveal to her father and she just begged her father to let her marry the man she loved. At [29] it was not reasonable to expect the Appellant to be able to produce the original arrest warrant and it is an error of law to rely on an absence of corroboration and not reasonable to expect her to obtain it.

9. Mr Joseph expressly accepted that the absence of contact with Ali has not been addressed in the grounds of appeal and that the Judge may not have erred in law in this respect, but he submitted that it is not sufficient by itself to reject the core credibility of the claim and does not detract as it is one factor amongst many.

10. In respect of the Appellant's claimed conversion, this is dealt with at [31] onwards. The finding at [33] is a misrepresentation of the Appellant's case: see Q170 of the asylum interview record, which makes clear that the Appellant had difficulties with Islam even in high school and in her screening interview she said she had been born into Islam but did not follow it anymore and this was before she converted. So contrary to the Judge's finding she too did not abandon "*lifelong held beliefs*".

11. Mr Joseph submitted that at [34] the Judge made an error of fact regarding apostasy, in that she would be considered an apostate as a convert from Islam to Christianity and that he further erred in finding that she flits between agnosticism and being uninterested in religion. Further, Mr Joseph submitted that there was no reference at all to the caselaw *cf. Dorodian* at [35] in that, whilst attendance at Church is not determinative, weight can be given to that. The Appellant has also performed other activities in the community, which deserve to be at least assessed by the Judge but he gave these no scrutiny at all.

12. At [36] whilst the Judge is entitled to accept or reject the evidence of the Pastor he has to do so in accordance with the caselaw and has failed to provide adequate reasons for completely dismissing that evidence. At [37] Mr Joseph submitted that the finding that the speed of baptism is alarming is a misrepresentation of the evidence. He submitted that it cannot be directed at this Appellant as she had not been baptized at the time of the appeal hearing. There is no reference to her evidence at Q180 of her AIR that she said she hoped to be become a Christian and at Q208 that she hoped to be baptized if ready and accepted as such by the community. So contrary to the Judge's finding there was no rush. The Pastor's letter refers to knowing her for 4 months, her regular attendance at Church, attending a foundation course and waiting to be baptized, but there is no suggestion she was baptized at the time of the appeal hearing.

13. In his submissions, Mr Howells asserted that there was no material error of law emerging from the determination. The Judge dealt with the two limbs of the claim separately and in succession and dealt with each limb over several paragraphs and any errors in his consideration were not material to the overall findings which he reached.

14. In respect of the adultery claim, the Judge was entitled at [23] to draw a distinction between the Appellant's conservative and strict upbringing and her more liberal behaviour outside the home. At [24] he found her account of the relationship to be vague and lacking in detail and he was entitled to reach those findings. The Judge does not refer to the appeal statement. The asylum interview was the Appellant's opportunity to set out her claim to the Home Office. The refusal decision found that her answers regarding the relationship were vague and lacking in detail.

15. Mr Howells accepted at [25] that the Judge erred in respect of the CPIN as to relationships taking place outside marriage but not a material error. In respect of the

findings at [27] Mr Howells submitted that the credibility issue has arisen from the Appellant's evidence and has not been challenged in the grounds of appeal. At [29] the Judge noted that the Appellant did not produce an arrest warrant. He submitted that the Judge's findings are adequately reasoned and any errors were not material in light of the credibility findings.

16. In respect of the Appellant's religious conversion which the Judge addressed at [33] this aspect of the claim also suffers from vagueness and a lack of detail as per the refusal letter (based on the AIR). At [35] the Judge noted the Appellant's attendance at church but that this was not determinative and that has to be correct. At [36] the Judge did not give any weight to the evidence of Pastor Saddler but gave adequate reasons for that ie. he had spoken to her only briefly; had only known her 4 months and did not know her outside what she had told him. The Judge was entitled to find that he was not in a position to give weighty evidence in line with *Dorodian*. At [37] it is not altogether clear what evidence was before the Judge on the issue of baptism. It is possible the Judge heard evidence she was planning on being baptized shortly and found this alarming. We would submit given the Judge found her account was vague and lacking in detail any error would not be material. Mr Howells submitted that the grounds amount to no more than a disagreement with the Judge's findings of fact which were open to him on the evidence.

17. There was no reply by Mr Joseph.

18. I found an error of law in respect of the Judge's approach to the Appellant's Christian conversion but reserved my decision in respect of the Judge's findings as to the claim based on the Appellant's adultery. I now give my reasons.

Findings

19. I find material errors in the approach taken by the Judge to the Appellant's conversion to Christianity, when his reasoning as a whole is subjected to close analysis. The reasons provided by the Judge were that:

- (i) the Appellant's account suffered from vagueness and a lack of detail [33];
- (ii) there was no tangible, personal and verifiable reason for the Appellant to abandon her lifelong held beliefs [33];
- (iii) the Appellant could not ever be considered an apostate even if it were true that she had converted [34];
- (iv) attendance at Church even regularly is not determinative of the believability of conversion;
- (v) with regard to the evidence of Pastor Mike, he could not accept anything he said in relation to the genuineness of what he perceives to be the Appellant's conversion, having spoken to her only briefly, albeit on several occasions; he does not know her outside of what she has told him; he has not taught her in Bible class; he has known her for no more than 4 months [36];
- (vi) the speed at which one is baptised is alarming and the Appellant concedes her knowledge of her claimed new faith is embryonic [37].

20. In respect of the first reason provided, whilst in her asylum interview, which took place on 9 June 2017, which was two months after the Appellant first attended Church in Swansea, the Appellant did not claim to be a Christian but was exploring the faith and she was able to identify the Holy Trinity and the Pentecost. I find that the Appellant's level of knowledge at that time was consistent with what she claimed. I further find that the detail in her witness statement for the appeal, dated 3 August 2017, is consistent with the fact that she had been attending Bible Studies and had become more involved with the Church.

21. In respect of the second reason, I accept the submissions made by Mr Joseph that the Appellant's response to Q170 of the asylum interview record, makes clear that the Appellant had difficulties with Islam even in high school and in her screening interview she said she had been born into Islam but did not follow it anymore and this was before she converted. So contrary to the Judge's finding she did not abandon "*lifelong held beliefs*" and there were a number of reasons, including her forced arranged marriage, why she decided to reject Islam in favour of Christianity.

22. In respect of the third reason, that the Appellant would not be considered an apostate, this is an error of fact. The refusal decision at [68] citing from the CPIN dated February 2017 at 2.2.5. and 2.2.6 makes clear that Christians who have converted from Islam are considered apostates. I consider this to be a material error given that the Judge has failed to properly apprehend that the very fact of conversion would give rise to the risk of being treated as an apostate and the Appellant could not be expected to lie about this: MT (Ahmadi - HJ (Iran)) Pakistan [2011] UKUT 277(IAC).

23. In respect of the fourth reason, whilst it is correct that attendance at Church, even regularly, is not determinative, it is a material factor to be considered, however, having already concluded that the Appellant's claimed conversion is not genuine, I find that the Judge essentially disregarded this aspect of the evidence.

24. In respect of the fifth reason, I find that the reasons provided by the Judge were inadequate to address the import of the evidence of Pastor Mike Saddler, who was in effect a *Dorodian* witness and who not only provided a letter dated 31 July 2017 but attended the hearing to give evidence on the Appellant's behalf. There is no record of his evidence recorded in the decision and reasons nor any record of proceedings on the Tribunal file, but in his letter the Pastor provides support for salient aspects of the Appellant's claimed conversion. In particular, he states that: "*whilst we believe in teaching Christians the basis of their faith, as evidenced by the classes above and our Sunday services, we believe that becoming a Christian is not a matter of head knowledge but a matter of personal experience. Since such experience is necessarily subjective, we would judge a person's sincere belief on their character and evidences of a changed lifestyle rather than on facts which can be learned... From my conversations with her I am in no doubt that she continues to practice her faith and demonstrate her love for Jesus Christ.*"

25. In respect of the sixth reason, in the absence of any record of the Appellant's evidence as to when she was going to be baptised and given that in neither her own witness statement nor that of the Pastor is a date for her baptism provided, I find no evidential basis for the finding at [37] that the speed at which one is baptised is alarming.

26. Consequently, for the reasons set out above, I find material errors in the Judge's approach to and reasons provided for finding that the Appellant's conversion to Christianity was not genuine.

27. In respect of the original basis of the Appellant's claim ie her claimed adultery, whilst it is an error of law to rely on an absence of corroborative evidence, at the same time the burden of proof is upon the Appellant and she failed to provide any supporting evidence in support of this aspect of her claim in the form of communication with her sister, her brother in law or her former partner outside her marriage. In light of this I find the Judge was entitled to find at [29] that the Appellant was not wanted by the authorities, in the absence of an arrest warrant or any evidence about this emanating from Iran.

28. However, I do find that the Judge erred in his findings at [23]-[28] as to the claimed adultery. There is nothing implausible about the Appellant having a relationship prior to her marriage or an adulterous relationship with the same man after her forced, arranged marriage to another man. The Home Office CPIN in respect of Adulterers dated November 2016 states that "*pre-marital and extra-marital relations are common*" and I find that the Judge erred in failing to assess the credibility of the Appellant's account in light of the background evidence, which is corroborative of her claim. His finding at [25] is unsustainable and I find that he failed to provide adequate reasons for rejecting her claim on this basis.

Decision

29. For the reasons set out above, I find material errors of law in the decision of First tier Tribunal Page. I set that decision aside and remit the appeal for a hearing *de novo* before a different Judge of the First tier Tribunal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

20 August 2018